UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

FIRSTENERGY GENERATION CORP.	)	
	)	
	)	
and	)	Case No. 6-CA-36631
	)	
	)	
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. 272, AFL-CIO	)	

RESPONDENT'S BRIEF IN SUPPORT OF EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

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Dated: October 13, 2010

TABLE OF CONTENTS

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I. STATEMENT OF THE CASE

A. Introduction

This case involves a Complaint issued by the General Counsel on May 20, 2010, against FirstEnergy Generation Corp. ("the Company"), based upon an unfair labor practice charge filed by International Brotherhood of Electrical Workers, Local Union No. 272, AFL-CIO ("the Union"). The Complaint alleges that the Company violated Section 8(a)(5) of the Act when it announced that the Company's "contribution to the costs charged to a retiree participating in the employer-sponsored health care program would be limited to three years of retirement." (ALJD at 1).

On September 17, 2010, Administrative Law Judge David I. Goldman issued a Decision in which he rejected the Company's position and affirmative defenses and found that the Company's action violated the Act. The Company has excepted to portions of the judge's Decision.

This brief is in support of the position taken by the Company in its Exceptions filed with the Board.

B. Statement of Facts

The underlying facts are undisputed and may be summarized as follows:

1. Background

The Company owns and operates electric generation plants in various states, including Pennsylvania, and is headquartered in Akron, Ohio. The Complaint involves the Company's Bruce Mansfield plant in Shippingport, Pennsylvania. At that plant, about 380 production and maintenance employees are represented by the Union, and have been for many years. (Jt. Ex. 1).

The Company and Union negotiated a series of collective bargaining agreements over the years; the most recent one is effective from December 5, 2009, to February 15, 2013. ("The 2009 Agreement"). (G.C. Ex. 12). Prior to executing this agreement, the Company and Union had engaged in negotiations for almost two years, since the previous collective bargaining agreement expired on February 16, 2008. ("The 2005 Agreement"). (G.C. Ex. 11). There were no contract extensions between February 2008 and December 2009. (Jt. Ex. 1).

2. Contractual Benefits

a. The Union "Opts Out" Of The Company Health Care Plan.

Article XVIII of the 2009 Agreement sets forth the provisions which apply to health insurance. Section 3, which is entitled, "Group Health Insurance Plan," provides employees with a health insurance plan, for which "each employee will pay 15% of the cost of

coverage for himself and 25% of the cost of coverage for their spouse and/or dependent children." (G.C. Ex. 12, at 59-60).[1]

Under both the 2005 Agreement and the 2009 Agreement, the Union was provided the "option to withdraw" from the health insurance plan provided by the Company. (G.C. Ex. 11, at 65; G.C. Ex. 12, at 62). This is referred to as the Union's "opt out" right, and the Union elected to opt out and provide separate health care coverage for the bargaining unit the Union represents. (Jt. Ex. 1). The effect of this action is to make the Union "solely responsible for providing health care coverage to its members and their families," and the Company's only obligation is to "contribute and forward payment to the Union's health care provider for each employee an amount equal to the contribution it would normally make for each employee represented by the Union under the [Company] Plan." (G.C. Ex. 11, at 65; G.C. Ex. 12, at 62). The Union's separate coverage was provided through the UPMC Health Plan and Highmark. The Union opt out decisions are based upon the Union's assertion that it can find better and less expensive coverage for the bargaining unit employees, with the result of a smaller monthly employee contribution and more comprehensive coverage than what was provided by the Company. The net cost to the Company is the same. (Jt. Ex. 1).

b. The Parties Negotiated Benefits For Future Retirees.

The instant matter involves retiree benefits, and Article XVIII of both the 2005 Agreement and the 2009 Agreement specifically address health care coverage for employees who retire. For example, the 2009 Agreement provides that a bargaining unit employee who retires after February 16, 2008, through February 15, 2013, shall have health care coverage "in accordance with the terms and conditions of the health care plan in effect for a regular full-time

[1] Article XVIII, Section 3 of the 2005 Agreement had similar language, with different percentages for payment of the cost of coverage. (G.C. Ex. 11, at 61-62).

represented employee." (Jt. Ex. 1; G.C. Ex. 12, at 62). However, since the Union elected to opt out from the Company's health insurance plan, this means that such employees who retire after February 16, 2008 will continue to receive health care coverage under the Union-selected provider, rather than under the Company's plan.

As noted by the judge, the Company and Union refer to bargaining unit employees who receive the above-described extension of the active employee health care plan for the duration of the 2009 Agreement, as specified in Article XIII, Section 3, as being "in the box." (Jt. Ex. 1) (ALJD at 3).

c. The Company Plan Covers Both Non-Bargaining Unit And Some Bargaining Unit Employees.

As noted above, Article XVIII, Section 3 of the 2009 Agreement refers to a health insurance plan provided by the Company. This is known as the FirstEnergy Health Care Plan ("the Plan"). (G.C. Ex. 15; Tr. 106). The Plan includes a variety of participants: Non-bargaining unit employees across FirstEnergy as well as some bargaining unit employees represented by various unions at other FirstEnergy locations. As of July 1, 2009, the Plan included more than ten thousand active Company employees, including employees represented by nine union locals not involved in the instant matter. (Resp. Ex. 4). It is undisputed that about twenty-five hundred employees represented by seven other union locals, including the Union, were not in the Plan because "they had opted out" of the Plan, as of July 1, 2009. (Tr. 108).

The Plan (as of July 1, 2009) also included employees formerly represented by the Union who had retired before February 16, 2008, and who are eligible and elect to participate in the Company Plan. As noted by the judge, this included what the parties refer to as "out-of-the-box retirees," meaning that these retirees came out of the box at the end of a collective bargaining agreement, and were offered and accepted the Plan as an option. (Tr. 109) (ALJD at

3). More than thirteen thousand retirees were covered by the Plan as of July 1, 2009. (Resp. Ex. 4). As of that same date, one hundred thirty-two retirees (including thirteen retirees formerly represented by the Union) were not participating in the Plan. These were employees who retired during the term of a collective bargaining agreement -- and were therefore "in the box" retirees -- but were currently covered by a different health care plan because the local union had elected to opt-out of the Company Plan. (Tr. 109).

3. July 2009 Announcement To Retirees And Other Benefit Changes

a. Health Care Benefits For Current Retirees Under The Plan Are Subject To Change.

The Company has a Compensation and Benefits Handbook whose purpose is to help participants "gain a better understanding of the terms and conditions of the Plan. ..." (G.C. Ex. 15, at 4). The Handbook provides as follows regarding "Retiree Medical Contributions:"

> "Retiree health care benefits are not vested. The level of benefits and retiree contributions required toward those benefits is subject to change at the discretion of the Company."

(G.C. Ex. 15, at 6) (Emphasis supplied).

The Handbook also refers to "benefit rights." It again states that: "Retirement health care benefits are not vested." It then states that "the contributions required for coverage including retiree health care benefits and contributions," may be "amended or terminated at any time" by the Company. (G.C. Ex. 15, at 62).

Finally, the Handbook makes reference to a "VEBA," which is described as a trust established by the Company to "pre-fund a portion of its post-retirement medical liability for current and future retirees." This VEBA, or Voluntary Employee Benefit Association, is operated to "receive favorable tax treatment" under the Internal Revenue Code. The Handbook

again states in the VEBA section that the creation and funding of a VEBA "does not preclude the Company from "modifying ... the health care benefits at any time," and that "[p]ost-retirement medical benefits are not vested." (G.C. Ex. 15, at 62) (ALJD at 5, note 3).

Both the 2005 Agreement and 2009 Agreement contain an "Appendix G" entitled, "Voluntary Employee Benefit Association." Appendix G states "[t]o the extent determined by the Company," the VEBA shall be maintained so as to provide "for the funding of post-retirement health benefits for current and future retired employees and their beneficiaries." (G.C. Ex. 11, at 86; G.C. Ex. 12, at 82).

b. The Company Has Historically Made Numerous Changes To Retiree Health Care Including The July 2009 Change.

In accordance with the Plan and the above statements in the Handbook, the Company has made numerous changes over the past seven years to retiree benefits. Retirees were generally notified of such changes during the open enrollment period, or through retiree newsletters, or by a direct letter. (Tr. 111; Resp. Ex. 5). Numerous changes in employee benefits have also been made over the same time period. (Resp. Ex. 6). For example, regarding retiree benefits, in addition to the benefit change at issue in this matter, the Company added co-pays (in 2004), replaced copays with coinsurance (in 2005), changed the benchmark plan (in 2008), changed providers (in 2003, 2006, 2007, 2008 and 2009), and changed maximums for various benefits (in 2004, 2005, 2007 and 2008). (See Resp. Ex. 5).

In addition to the benefit changes communicated as noted above, the Union was informed in early 2004 that effective July 1, 2004, "new hires will not be eligible for FirstEnergy health care benefits when they retire." The Union was informed that these new hires will "have access to whatever health care plan is available at the time, if any," when they retire. (Resp. Ex. 9). At the time the Union was so notified, the then existing collective bargaining

agreement had expired, and the Company and Union were in negotiations for a successor agreement, just as they were in June 2009 when the retirees were notified of a future change in the instant matter. (Tr. 38).

The change to current retiree benefits at issue in the instant matter was communicated through the *FirstEnergy Employee Update*, an employee newsletter, as well as a letter to retirees. The letter to retirees was dated June 2, 2009, and stated as follows:

> "While access to the Company's retiree health care plan will remain, Company-subsidized monthly payments toward your coverage will be limited to three years beginning July 1, 2009 and each year management will determine, as it now does, the level of subsidy the Company can support. Beginning July 1, 2012, you will continue to have access to our retiree health care plans but without any further Company contributions toward your monthly cost. ... For current eligible retirees, and similar three-year limitation on Company subsidized contributions to retiree health care is anticipated when they retire."

(G.C. Ex. 16). A similar statement was made in the *Employee Update*. (G.C. Ex. 13).[2]

4. The 2008 And 2009 Negotiations

During the 2008-2009 contract negotiations, the Union made multiple proposals regarding health care for future retirees. For example, the Union proposed that the VEBA provision, set forth in Appendix G, be amended to read that the VEBA shall be funded to provide benefits for current and future retirees "for the remainder of their lives." The Union also proposed that Appendix G state that "this guarantee of lifetime coverage for current retirees and employees will survive the expiration of this collective bargaining agreement," and that any "reservation of rights language in the VEBA plan documents shall not apply with respect to this guarantee." (Resp. Ex. 12). The Union also made a proposal on February 13, 2008, to revise the

[2] The Administrative Law Judge referred to the date, at one point in his Decision, as "July 2010," but it is undisputed that the correct date for the announced change was July 2009. See ALJD at page 4, line 13.

Compensation and Benefits Handbook to state that "all future retirees will be eligible for retiree healthcare." (G.C. Ex. 2). The Company rejected these proposals. As a member of the Union negotiating committee stated at the hearing and as the judge stated in his Decision, the Company "had no interest" in these proposals at any time during the negotiations. (Tr. 42-43, 76, 78) (ALJD at 5).

However, a proposal made by the Company in 2008 during the negotiations was ultimately accepted by the Union and incorporated into Article XVIII, in the 2009 Agreement. The language in Article XVIII, Section 2 now states that the Company-provided plans -- including the medical plan -- "are outlined in the FirstEnergy Employee Compensation and Benefits Handbook." Section 2 also now provides that except as otherwise specified, participation in the benefit programs "will be in accordance with the specific terms and conditions of the applicable plans as stated in the Benefits Handbook, as amended by the Company from time to time." (Resp. Ex. 13; G.C. Ex. 12, at 59).

By letter dated June 3, 2009, one day after the notices were sent to retirees, the Union made an "official request" to negotiate "the changes in FirstEnergy's contribution to healthcare for future retirees...." (G.C. Ex. 3). This occurred the same day the Company sent the Union an offer to settle the contract. (G.C. Ex. 6).

The Company and Union next met on July 15, 2009 where numerous issues were raised by the Union, including the Union's desire to discuss health care for future retirees. The Company's position at the meeting on this issue, reflected in its letter to the Union dated July 24, 2009, was that the changes announced on July 2 "affected only current retirees." The Company's spokesperson explained that this issue was a permissive subject of bargaining at best, and "the Company was not interested in bargaining over those changes." (G.C. Ex. 6). As the

Company's spokesperson stated at the hearing, the Company "had no interest in talking about" current retiree benefits. (Tr. 99). The Company also told the Union on July 15 that insofar as future retirees were concerned, since January 2008 numerous proposals "relative to that particular subject" were presented by the Union and rejected. (Tr. 100). In particular, the Company mentioned the Union's proposed changes to Appendix G, seeking to fund retiree benefits "for the remainder of their lives." (Tr. 100; Resp. Ex. 12). The Union was also informed on July 15 that whatever the Company was willing to do regarding future retirees "was captured in our healthcare proposal." (Tr. 100). As the letter dated July 24, 2009, to the Union stated, the Company has "consistently and exhaustively" explained in numerous bargaining sessions that it rejected "any effort to establish long term or permanent participation in FirstEnergy's retiree health care plans for future retirees, without the ability to amend at the Company's exclusive discretion." (G. C. Ex. 6).

II. STATEMENT OF THE QUESTIONS INVOLVED

A. Whether the Administrative Law Judge erred when he concluded that the subsidy cap affected current employees rather than only current retirees and was therefore a mandatory rather than permissive subject of bargaining.

B. Whether the Administrative Law Judge erred when he rejected the Company's affirmative defense and concluded that the Company's introduction of the subsidy cap was not taken pursuant to a longstanding practice and therefore violated the Act.

III. ARGUMENT

A. THE ADMINISTRATIVE LAW JUDGE ERRED WHEN HE CONCLUDED THAT THE SUBSIDY CAP WAS A MANDATORY SUBJECT OF BARGAINING BECAUSE IT AFFECTED CURRENT EMPLOYEES AND NOT JUST CURRENT RETIREES.

As the Administrative Law Judge noted in his Decision, the Company's initial position is that the change in retiree benefits implemented for current out-of-the-box retirees in July 2009 has not yet been implemented for current employees represented by the Union. (ALJD at 13). The judge rejected this position and concluded that the cap has been implemented for current employees, and that by implementing the cap and refusing to bargain, the Company violated the Act. (ALJD at 14). The Company has excepted to this conclusion, and submits, for the reasons set forth below, that the change affected only current retirees and was therefore a permissive subject of bargaining.

The judge stated in his Decision that: "It is not an unfair labor practice for an employer to unilaterally implement a permissive subject of bargaining." (ALJD at 10). The Company submits that under applicable precedent, the instant matter clearly involves a permissive rather than a mandatory subject of bargaining.

In Midwest Power Systems, Inc., 323 NLRB 404, 406 (1997)[3], the Board stated that under the Supreme Court decision in Chemical Workers v. Pittsburgh Plate Glass Company, 404 U.S. 157 (1971), the Act "does not restrict the Respondent from changing the benefits of already retired employees." The same point was made several years later in Mississippi Power Company, 332 NLRB 530 (2000), enf. denied., 284 F.3d 605 (5th Cir. 2001), where the Board stated "that presently retired former employees are not employees...." (Emphasis supplied). The Board distinguished the situation where an employer prospectively announced changes which "affected current active employees who would retire on or after the announced implementation dates," which is a mandatory subject of bargaining. Midwest Power,

[3] This decision was later remanded to the Board by the United States Court of Appeals for the District of Columbia Circuit, at 159 F.3d 636 (1998), and was the subject of a supplemental Board decision, at 335 NLRB 237 (2001), on the waiver issue.

323 NLRB at 406. The Administrative Law Judge concluded that the instant matter is one which involves the latter situation. The Company, on the other hand, submits that the undisputed facts point to the opposite conclusion, namely, that the change announced by the Company affects only current retirees and was therefore a permissive subject of bargaining.

The announcement and letter on June 2, 2009, was directed to current retirees. (ALJD at 4). The letter specifically stated that for "current eligible employees," a similar limitation on contributions "is anticipated when they retire." (G.C. Ex. 16). It is undisputed that until at least February 15, 2013, and then for three years thereafter, no "current eligible employees" would be affected by the change. The reason is that the "future retirement benefits of current active employees," Midwest Power, 323 NLRB at 406, was the subject of extensive negotiations in 2008 and 2009, as the judge noted in his Decision, and the result of these negotiations is embodied in the 2009 Agreement under Article XVIII. This is the language which puts current union-represented employees who retire before February 15, 2013, "in the box" and receiving the active employee health plan.

The Administrative Law Judge stated in his Decision that the subsidy cap, even if not affecting a unit employee for the term of the 2009 Agreement, "is a matter in which current employees have an interest now." (ALJD at 14). This was said to be due to the "anticipation" that the cap would apply to the current employees when they retire.

The Board stated in Southern California Edison Company, 284 NLRB 1205, n. 1 (1987), that a change in terms for union-represented employees "is measured by the extent to which it departs from the existing terms and conditions affecting employees." (Emphasis supplied). In the instant matter, the "existing terms and conditions affecting employees" is set forth in Article XVIII of the 2009 Agreement. Article XVIII provides that "employees retiring

on or after February 16, 2008, through the term of the 2009 Agreement (set to expire February 15, 2013), will be entitled, for the life of the 2009 Agreement, to health care coverage from the Employer in accordance with the terms and conditions of the plan in effect for the active unit employees." (ALJD at 3). It is possible that the result for these active employees will be the same when the 2009 Agreement is the subject of negotiations in early 2013. But "anticipation" of a change in terms is simply not the same as an actual change to "existing terms," as the Board stated in Southern California Edison, supra. The Company submits that instant situation is precisely what the Company stated to the Union at the meeting on July 15, 2009: The announced change "affected only current retirees." (G.C. Ex. 6) (ALJD at 7).

In his Decision, the Administrative Law Judge relied upon Midwest Power Systems, where the Board stated that the changes announced in that case "affected current active employees who would retire on or after the announced implementation dates." 323 NLRB at 406. However, in Midwest Power Systems, the stipulated facts before the Board indicated that after the announced changes, the employer and union negotiated a new collective bargaining agreement where there were "no proposals ... regarding retiree benefits." 323 NLRB at 406. Thus, there were no changes to be anticipated after the expiration of a collective bargaining agreement, as in the instant matter, and the subsequent negotiations in Midwest Power Systems yielded no alteration of the announced change regarding retiree benefits. Thus, Midwest Power Systems is readily distinguishable from the factual circumstances presented in the instant matter. Simply stated, the existing terms and conditions of the current employees have not been altered by the Company's June 2009 announcement.[4]

[4] The Company also notes that in both Georgia Power Co., 325 NLRB 420 (1998), and Mississippi Power Co., supra, the changes at issue were announced and implemented, as opposed to the "anticipation" that a change may affect current employees after expiration of a current collective bargaining agreement, which is the instant situation.

Therefore, for the above reasons, the Company submits that the Board should conclude that the Administrative Law Judge erred when he found that the Company had an obligation to bargain with the Union over the change in the subsidy cap for retiree benefits.

B. THE COMPANY'S INTRODUCTION OF THE SUBSIDY CAP WAS TAKEN PURSUANT TO A LONGSTANDING PRACTICE AND THE ADMINISTRATIVE LAW JUDGE THEREFORE ERRED WHEN HE CONCLUDED THE CHANGE VIOLATED THE ACT.

The Company next submits that assuming arguendo that its change in the subsidy cap was a mandatory rather than a permissive subject of bargaining, the undisputed facts nonetheless compel the conclusion that under applicable Board law, the Company did not violate the Act. As the Administrative Law Judge noted in his Decision, the Company relies upon the Board's decision in The Courier-Journal, 342 NLRB 1093, 1094 (2004), where the Board held that during negotiations, a unilateral change made "pursuant to a longstanding practice is essentially a continuation of the status quo -- not a violation of Section 8(a)(5)." (ALJD at 14). However, the Administrative Law Judge went on to reject this defense based upon Courier-Journal, concluding that the Company failed to show Union acquiescence or the establishment of a practice necessary to show that the subsidy cap was a "mere continuation of the status quo." (ALJD at 15). The Company has excepted to these conclusions. For the reasons set forth below, the Company submits that Courier-Journal is directly applicable, and that the Company has carried its burden of proof.

The Company first notes that the facts in Courier-Journal are quite similar to those in the instant matter. In both situations, the changes were made during a contractual hiatus period, involved health insurance coverage, and applied to both represented and non–represented

employees, and were made numerous times without objection from the Union. As such, the Company submits that it did not violate the Act for the reasons set forth in Courier-Journal.

The Company is aware that in several Board decisions issued after the hearing before the Administrative Law Judge in the instant matter, the Board found that the burden under Courier-Journal was not met. In E.I. DuPont, 355 NLRB No. 176 (August 27, 2010), and E.I. DuPont, 355 NLRB No. 177 (August 27, 2010), the Board distinguished Courier-Journal.[5] In both recent decisions, the asserted practices were limited to "changes that had been made when a contract ... was in effect." 355 NLRB No. 176, slip op. at 2. The Board drew a contrast between those recent cases and the facts in Courier-Journal, where the employer had established a past practice of making change to employees' health care premiums "both during periods when a contract was in effect and during hiatus periods." 355 NLRB No. 176, slip op. at 1. (Emphasis supplied). Because the employer in E.I. DuPont could not show a practice which extended to hiatus periods between contracts, the Board concluded that Courier-Journal was "plainly distinguishable on this basis." 355 NLRB No. 176, slip op. at 2.

However, as noted above, and unlike the situation in E.I. DuPont, the Company was in one of its "hiatus periods between contracts" when the retiree benefit changes were announced in June 2009. Courier-Journal, 342 NLRB at 1094.

The prior agreement had expired in February 2008, and a new agreement was reached later in 2009. (G.C. Ex. 11; G.C. Ex. 12). The Company presented undisputed evidence at the hearing before the Administrative Law Judge that from 2003 to 2009, it regularly made numerous unilateral changes in the benefits applicable to future retirees, and that the Union never

[5] The Board refers to the "Courier-Journal cases" in the E.I. DuPont cases, which is a reference to a second case decided around the same time for the same employer. Courier-Journal, 342 NLRB 1148 (2004). The Board's rationale is set forth in the earlier decision discussed herein.

opposed those changes. (Resp. Ex. 5). Indeed, it was also undisputed that in a prior contractual hiatus in 2004, the Company announced a change to future benefits for new hires, namely, that they would get no health care benefits when they retire. (Resp. Ex. 9). Moreover, as in Courier-Journal, the changes applied to all future retirees, whether represented by the Union or whether they were unrepresented.

Moreover, contrary to what the Administrative Law Judge states in his Decision as an element of the Company's burden, there is nothing in Courier-Journal about "minor changes in benefits" being insufficient to show a longstanding practice. (ALJD at 15).[6] Indeed, in Courier-Journal, the Board noted that the employer had "regularly made changes in the costs and benefits" to the health care program without opposition, which is exactly what the Company did in the instant case. 342 NLRB at 1094. Moreover, the Company submits that the Administrative Law Judge relied upon "waiver" cases to make his point about the Company's failure to carry its burden under Courier-Journal. But as the Board noted in that case, its "decision is not grounded in waiver. It is grounded in past practice, and the continuance thereof." 342 NLRB at 1095.

Finally, the Company notes that the judge also relied upon another recent Board decision, Caterpillar, Inc., 355 NLRB No. 91 (August 17, 2010), which was also decided after the hearing in the instant matter. The judge stated that Caterpillar is "dispositive" of the Company's claim that its decision represents a continuation of the status quo. The Board found no practice in Caterpillar, and did not even refer to Courier-Journal in its decision. To the extent that the Administrative Law Judge believes no practice was established, the Company submits that the practice reviewed on by the Board in Courier-Journal is more "dispositive" than what

[6] The Company has excepted to the judge's characterization of the unopposed changes in providers, plans and maximums as "minor changes." (ALJD at 15).

seems to have occurred in Caterpillar. The Company submits that the judge erred in relying upon Caterpillar to reach his conclusion.

In sum, the Company submits that the facts make it clear that, as in Courier-Journal, it also "acted in a manner consistent with a lawful, established past practice concerning a mandatory subject, as entitled to do." 342 NLRB at 1095. The Administrative Law Judge therefore erred when he concluded that the Company violated the Act when it announced the change to retiree benefits during the contractual hiatus period in 2009.

IV. CONCLUSION

For the foregoing reasons, the Company submits that it did not violate Section 8(a)(5) of the Act. Accordingly, the Board should refuse to adopt the Decision and Order of the Administrative Law Judge, and should instead dismiss the Complaint in its entirety.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing *Respondent's Brief in Support of Exceptions to the Decision of the Administrative Law Judge* was served upon the following this 13th day of October, 2010, by the United States Postal Service, first class, postage prepaid:

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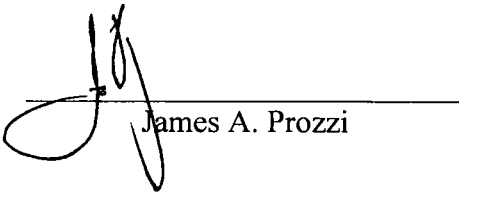

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